

sold will be paid by FmHA or its successor agency under Public Law 103-354 for inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA or its successor agency under Public Law 103-354 will be paid from cash proceeds FmHA or its successor agency under Public Law 103-354 is to receive as a result of the sale or by voucher and will be accomplished by one of the following:

(a) For purchasers receiving FmHA or its successor agency under Public Law 103-354 credit and required to escrow, FmHA or its successor agency under Public Law 103-354's share of accrued taxes and assessment installments will be deposited in the purchaser's escrow account.

(b) For purchasers not required to escrow, accrued taxes and assessment installments may be:

(i) Paid to the local taxing authority if they will accept payment at that time; or

(ii) Paid to the purchaser. If appropriate, for program purchasers, the funds can be deposited in a supervised bank account until the taxes can be paid.

(c) Except for SFH, deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser.

[56 FR 6953, Feb. 21, 1991]

**§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).**

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an environmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA or its successor agency under Public Law 103-354 approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farm-

land would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500-3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) *Real property located in flood, mudslide hazard, wetland or Coastal Barrier Resources System (CBRS)*—(1) *Use restrictions.* Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property containing floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Applicable restrictions will be incorporated into quitclaim deeds in a format similar to that contained in Exhibits H and I of RD Instruction 1955-C (available in any Agency office). A listing of all restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in, subpart B of part 1806 of this chapter will not be sold for residential purposes unless determined by the county official or district director to

be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants).

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and nonprogram (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, no credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan or any other type of Federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purpose of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Wetlands located on FSA inventory property.* Perpetual wetland conservation easements (encumbrances in deeds) to protect and restore wetlands or converted wetlands that exist on suitable or surplus inventory property will be established prior to sale of such property. The provisions of paragraphs (a) (2) and (3) of this section also apply, as does paragraph (a)(1) of this section insofar as floodplains are concerned. This requirement applies to either cash or credit sales. Similar restrictions will be included in leases of inventory properties to beginning farmers or ranchers. Wetland conservation easements will be established as follows:

(1) All wetlands or converted wetlands located on FSA inventory property which were not considered cropland on the date the property was acquired and were not used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will receive a wetland conservation easement.

(2) All wetlands or converted wetlands located on FSA inventory property that were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired will not receive a wetland conservation easement.

(3) The following steps should be taken in determining if conservation easements are necessary for the protection of wetlands or converted wetland on inventory property:

(i) NRCS will be contacted first to identify the wetlands or converted wetlands and wetland boundaries of each wetland or converted wetland on inventory property.

(ii) After receiving the wetland determination from NRCS, FSA will review

the determination for each inventory property and determine if any of the wetlands or converted wetlands identified by NRCS were considered cropland on the date the property was acquired or were used for farming at any time during the period beginning on the date 5 years before the property was acquired and ending on the date the property was acquired. Property will be considered to have been used for farming if it was primarily used for agricultural purposes including but not limited to such uses as cropland, pasture, hayland, orchards, vineyards and tree farming.

(iii) After FSA has completed the determination of whether the wetlands or converted wetlands located on an inventory property were used for cropland or farming, the U.S. Fish and Wildlife Service (FWS) will be contacted. Based on the technical considerations of the potential functions and values of the wetlands on the property, FWS will identify those wetlands or converted wetlands that require protection with a wetland conservation easement along with the boundaries of the required wetland conservation easement. FWS may also make other recommendations if needed for the protection of important resources such as threatened or endangered species during this review.

(4) The wetland conservation easement will provide for access to other portions of the property as necessary for farming and other uses.

(5) The appraisal of the property must be updated to reflect the value of the land due to the conservation easement on the property.

(6) Easement areas shall be described in accordance with State or local laws. If State or local law does not require a survey, the easement area can be described by rectangular survey, plat map, or other recordable methods.

(7) In most cases the FWS shall be responsible for easement management and administration responsibilities for such areas unless the wetland easement area is an inholding in Federal or State property and that entity agrees to assume such responsibility, or a State fish and wildlife agency having counterpart responsibilities to the FWS is willing to assume easement

management and administration responsibilities. The costs associated with such easement management responsibilities shall be the responsibility of the agency that assumes easement management and administration.

(8) County officials are encouraged to begin the easement process before the property is taken into inventory, if possible, in order to have the program completed before the statutory time requirement for sale.

(c) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the Agency official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See subpart F of part 1901 of this chapter for additional guidance.) The State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historical or archaeological importance; has apparent significant architectural features; or is similar to other Agency properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior.

(3) If a property is listed on the National Register or is determined eligible for listing by the Secretary of Interior, the Agency official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interest. The Advisory Council on Historic Preservation must be consulted by the State Director or

State Executive Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(4) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to a potential bidder or purchaser through a notice procedure similar to that in §1955.13(a)(2) of this subpart.

(d) *Highly erodible farmland.* (1) The FSA county official will determine if any inventory property contains highly erodible land as defined by the NRCS and, if so, what specific conservation practices will be made a condition of a sale of the property.

(2) If the county official does not concur in the need for a conservation practice recommended by NRCS, any differences shall be discussed with the recommending NRCS office. Failure to reach an agreement at that level shall require the State Executive Director to make a final decision after consultation with the NRCS State Conservationist.

(3) Whenever NRCS technical assistance is requested in implementing these requirements and NRCS responds that it cannot provide such assistance within a time frame compatible with the proposed sale, the sale arrangements will go forward. The sale will proceed, conditioned on the requirement that a purchaser will immediately contact (NRCS) have a conservation plan developed and comply with this plan. The county official will monitor the borrower's compliance with the recommendations in the conservation plan. If problems occur in obtaining NRCS assistance, the State Executive Director should consult with the NRCS State Conservationist.

(e) *Notification to purchasers of inventory property with reportable underground storage tanks.* If the Agency is selling inventory property containing a storage tank which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of §1955.57 of subpart B of this part, the potential purchaser will be informed of the reporting requirement and provided a copy of the report filed by the Agency.

(f) *Real property that is unsafe.* If the Agency has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in §1955.103 of this subpart and which cannot be feasibly made safe, the State Director or State Executive Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Deputy Administrator, for review and guidance.

(g) *Real property containing hazardous waste contamination.* All inventory property must be inspected for hazardous waste contamination either through the use of a preliminary hazardous waste site survey or Transaction Screen Questionnaire. If possible contamination is noted, a Phase I or II environmental assessment will be completed per the advice of the State Environmental Coordinator.

[62 FR 44401, Aug. 21, 1997, as amended at 68 FR 7700, Feb. 18, 2003]

**§ 1955.138 Property subject to redemption rights.**

If, under State law, FmHA or its successor agency under Public Law 103-354's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.